

**BEFORE THE DIVISION OF CONSUMER PROTECTION
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

In the matter of: IMERGENT, INC. AND STORESONLINE, INC., Respondents.	<u>ORDER OF ADJUDICATION</u> DCP Case No. 55272
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This matter came before Thomas L. Copeland, the person designated as the presiding officer by the Director of the Division of Consumer Protection (“Division”), in a hearing held on March 27 and 28, 2007. The Division was represented by its Chief Investigator Kent Nelson and Assistant Attorney General Jeff Buckner. The Respondents iMergent, Inc. (“iMergent”) and StoresOnline, Inc. (“StoresOnline”) (collectively “Respondents”) were represented by their attorneys Craig Carlile, Gregory Roberts, Blair Jackson, and Gregory Christiansen. In addition, Respondents’ legal counsel Jeff Korn and Respondents’ Vice President of Legal Affairs William Walter were also present. After reviewing the evidence presented, the presiding officer for the Division made his findings of fact, conclusions of law, and recommended order. The findings of fact and conclusions of law are adopted as those by the Division and are incorporated in this Order of Adjudication by this reference. The Division orders:

1. In violation of UTAH CODE ANN. § 13-15-4, the Respondents, as sellers of assisted marketing plans, commenced business in this state without having first filed the required information with the Division.

2. In accordance with UTAH CODE ANN. §§ 13-2-6 and 13-15-6, the Respondents, jointly and severally, are assessed and ordered to pay an administrative fine of \$2,500.00. This administrative fine may be filed and entered with the appropriate court as a civil judgment.

3. In accordance with UTAH CODE ANN. §§ 13-2-5, 13-2-6 and 13-15-6, the Respondents are ordered to cease and desist from doing business in this state until they have filed with the Division the disclosures required by UTAH CODE ANN. § 13-15-4 and have received proof of such filing from the Division.

4. Pursuant to the terms of the agreement between the parties, the Division's Order of Adjudication is stayed pending the Respondents' exhaustion of administrative remedies and judicial review of the Division's Order.

5. In accordance with UTAH CODE ANN. §§ 13-2-6(2), a person who intentionally violates a final cease and desist order entered by the Division of which the person has notice is guilty of a third degree felony.

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

Agency review of this order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) calendar days after the date of this order. The agency action in this case was an informal proceeding. The laws and rules governing agency review of this proceeding are found in Title 63, Chapter 46b of the Utah Code, and Rule 151-46b of the Utah Administrative Code.

Please see the enclosed "INFORMATION ABOUT AGENCY REVIEW," which is also available at <http://www.commerce.utah.gov/welcome.html>, by selecting "Agency Review."

Dated this 25th day of May, 2007.

UTAH DIVISION OF CONSUMER PROTECTION



KEVIN V. OLSEN, DIRECTOR
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Salt Lake City, Utah 84114-6704
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CERTIFICATE OF SERVICE

I certify that I have this 25th day of May, 2007 served the foregoing ORDER OF ADJUDICATION on the parties in this proceeding by mailing a copy, properly addressed by first class mail with postage prepaid, to:

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And by hand-delivery to:

Kent Nelson, Chief Investigator
Utah Division of Consumer Protection

Jeff Buckner, Assistant Attorney General
Utah Attorney General's Office

A handwritten signature in blue ink, appearing to read "Nelson", is written over a horizontal line.

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In the matter of:
**IMERGENT, INC. AND
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Respondents.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDED
ORDER**

DCP Case No. 55272

This matter came before Thomas L. Copeland, the person designated as the presiding officer by the Director of the Division of Consumer Protection (“Division”), in a hearing held on March 27 and 28, 2007. The Division was represented by its Chief Investigator Kent Nelson and Assistant Attorney General Jeff Buckner. The Respondents iMergent, Inc. (“iMergent”) and StoresOnline, Inc. (“StoresOnline”) (collectively “Respondents”) were represented by their attorneys Craig Carlile, Gregory Roberts, Blair Jackson, and Gregory Christiansen. In addition, Respondents’ legal counsel Jeff Korn and Respondents’ Vice President of Legal Affairs William Walter were also present. At the hearing, witnesses were sworn and presented testimony.

Prior to the hearing, Respondents filed three motions: a Motion to Disqualify, a Motion to Dismiss, and a Motion to Dismiss Administrative Citation for Lack of Subject Matter Jurisdiction. Although each motion was found to be untimely, the motions were considered and denied orally at the outset of the hearing.

Respondents’ Motion to Disqualify sought to disqualify the Division’s Chief Investigator Kent Nelson from representing the Division on the grounds that he is a necessary witness and

should not act as an advocate under Rule 3.7 of the Utah Rules of Professional Conduct. The Utah Rules of Professional Conduct only apply to attorneys. Since Mr. Nelson is not an attorney, Rule 3.7 does not apply to him and did not prevent him from representing the Division. Further, UTAH ADMIN. CODE R151-46b-6(a) states that “[a] party may be represented by counsel or may represent oneself individually, or if not an individual, may represent itself through an officer or employee.” In *Angell v. Board of Review*, 750 P.2d 611 (Utah Ct. App. 1988), the Utah Court of Appeals held that it was reversible error to prevent a petitioner’s non-attorney husband from both representing her in an administrative hearing and testifying in that hearing. Based on these considerations, Respondents’ Motion to Disqualify was dismissed.

Respondents’ Motion to Dismiss sought dismissal of the administrative citation for failing to “set forth with particularity the nature of the violation, including a reference to the statutory or administrative rule provision being violated” as required by UTAH CODE ANN. 13-2-6(3)(a). The administrative citation set out the nature of the violation, namely the allegation that Respondents have violated the *Business Opportunity Disclosure Act*. Additionally, the administrative citation cited those provisions of the Act that Respondents are alleged to have violated. Therefore, under the standard set out in Section 13-2-6(3)(a), the administrative citation, while not perfect, is not insufficient as a matter of law. Further, the Administrative Citation contains the information required by UTAH CODE ANN. 63-46b-3(2). Thus, Respondents’ Motion to Dismiss was denied.

Respondents also sought to have this matter dismissed based on a lack of subject matter jurisdiction. As discussed at the hearing, in accordance with Title 63, Chapter 46b, the Utah

Administrative Procedures Act, the Division has the authority to convene administrative hearings, issue cease and desist orders, and impose fines under all the chapters identified in Section 13-2-1. UTAH CODE ANN. 13-2-6(1). The *Business Opportunity Disclosure Act* is one of those statutes listed in Section 13-2-1. The citation here alleges that Respondents have violated the provisions of the *Business Opportunity Disclosure Act*. Thus, the Division has the ability to convene a hearing, issue a cease and desist order, and impose a fine, if appropriate. Thus, the Respondents' Motion was denied.

After reviewing the evidence presented, the presiding officer makes the following findings of fact, conclusions of law, and recommended order.

FINDINGS OF FACT

The presiding officer finds the following by substantial evidence. UTAH CODE ANN. § 13-2-6(3)(d).

Respondents' Identity

1. Respondent iMergent is a Delaware corporation, with its principal place of business in Orem, Utah.
2. Respondent StoresOnline is a Delaware corporation with its principal place of business in Orem, Utah.
3. StoresOnline is a wholly owned subsidiary of iMergent.

The StoresOnline Program

4. StoresOnline's sells software that allows a purchaser to build and maintain e-commerce websites, which enable the purchaser to market and sell products over the Internet.

StoresOnline also provides services in the form of technical support, customer service, and ongoing marketing training as part of their sales package or program. *See e.g.* Division's Exhibit A, page 74, line 3–8 (“The thrust of their company [StoresOnline] is to provide not just the sites but the tools, the technology, the resources, the marketing strategies, and the support. Really the whole package so that [the purchaser] can go out and be successful on the Internet.”). The websites can be built by either the purchaser or by StoresOnline for a fee.

5. StoresOnline describes their program as a partnership between themselves and their customers. *Id.* page 14, line 2–6; *id.* page 17, line 17–23.

StoresOnline Seminars

6. StoresOnline promotes its sales through two different types of seminars. The first seminar is a 90 minute preview session. Individuals are informed of the preview session through direct mail campaigns, newspaper, or radio advertisements.

7. During the preview session, individuals are invited to attend the full day workshop. Individuals attending the preview session are informed that they will be presented with a special offer at the full day workshop. Those wishing to attend the workshop pay a small fee and are given a Workshop Guarantee and Agreement Form.

8. The second seminar is a full day workshop. At the full day workshop, StoresOnline discusses and offers their program for sale.

The Full Day Workshop

9. The full day workshop takes place approximately two weeks after the preview session. Before the full day workshop begins, individuals are given an Internet Marketing

Workshop Registration form, which they are required to sign. Respondent's Exhibit 2, 5, 8, 11, 14, and 17.

10. The Internet Marketing Workshop Registration form contains the following statements:

4. We assume all who are attending the Internet Marketing Workshop are doing so because they desire to learn more about the Internet and to successfully market their products/services on the Internet. In the past, some have thought to use this meeting to promote their particular company, product, or business opportunity. This is not permitted. You agree not to directly or indirectly solicit other workshop attendees for your business, products, or services during or after attending the Internet Marketing Workshop.

* * *

6. Throughout all StoresOnline events, including this workshop, we explain, illustrate, and demonstrate numerous concepts, tools, and principles relative to doing business on the Internet. Many different websites and helpful tools will be discussed and shown during this training process. In this regard, it is important for you to know, understand, and assume that none of the web sites or tools being explained or demonstrated are, or have been associated with StoresOnline, unless specifically indicated. In each and every case it is not the specific site, or the specific tool, or where it is hosted, that is relevant, but rather the principle being explained and/or demonstrated.

I understand that the nature of the internet is dynamic, and constantly changing. Further, I understand that as additional products, software, and regulations may occur, such may affect how business is conducted on the Internet. It is also understood, and acknowledged, that StoresOnline, Inc. does not provide a marketing program and does not recommend or offer storefronts to be purchased for re-sale. I affirm that neither StoresOnline nor any of its representatives have any knowledge about my intended business and accordingly offer no guarantee that any representations, strategies, or marketing concepts that I learn about at this workshop will be applicable to my specific business/idea/product. I further understand all testimonials shared in StoresOnline, Inc. events are not typical and my results will vary depending on my product, price, and marketing efforts. I acknowledge that due to the changing nature of the Internet, some of the strategies and marketing concepts I learn about at this Workshop may need to be modified or avoided in the future.

Respondents' Exhibit 2, 5, 8, 11, 14, and 17.

11. During the full day workshop, individuals are taught general Internet marketing principles. Additionally, individuals are given the opportunity to have a one-on-one business consultation where they can get specific advice to help achieve their personal objectives. Division's Exhibit A, page 8–10. Individuals are told that if they are serious about being successful on the Internet, they need to sign up for one of those consultations. *Id.* page 10, line 6–8; *id.* page 47, line 9–11; *id.* page 212, line 15–20.

12. During the full day seminar, the presenters discuss their own success using StoresOnline's program, as well as the success that others have had with the program. Testimonials are also given where the speakers discuss their success with StoresOnline's program. The presenter states that these results are not typical and that the results of those attending the seminar may vary. *See id.* page 5, line 20–24.

13. During the workshop, representations are made that individuals will be able to make money using StoresOnline's program. *See e.g. id.* page 12, line 25–page 13, line 25 (“But, but it would make sense that most of you are probably here in some way to make money. Somebody said to learn or information. And I would assume to learn how to make money online. Okay? Probably a safe assumption. Now is there anything wrong with you all being here for that reason? . . . If in your efforts to be more profitable and to make more money, and in our efforts to be more profitable and to make more money, if we realize we can do that easier by working together, doesn't it make sense for us to spend the day together? In other words, here's what I think, and you will probably agree. I think we are all here to determine whether or not

there's a win-win situation between what you're trying to accomplish online and what we're trying to offer as a potential partner."); *id.* page 15, line 19–21 ("If you're here to learn how to be more successful online or successful online, then you're here in the right spot."); *id.* page 16, line 6–8 ("We're looking for people who want their financial future to be better than their financial past."); *id.* page 17, line 4–7 ("The nice thing about the Internet is as long as we have the right tools and training and knowledge and then we apply it, then any single one of us could be successful."); *id.* page 61, line 13 ("You will get there with work and effort."); *id.* page 62, line 12–16 (StoresOnline's program will show "[h]ow to promote our site, how to get people to come to our site and then best of all how to get those people to pull some money out of their pocket and give it to us . . ."); *id.* page 76, line 23–page 77, line 1 ("95% of you aren't doing what you really want to be doing to make a living. And I would suggest that life's too short for that and we can do something about it."); *id.* page 78, line 3–7 (Many people are "still broke, living paycheck to paycheck, trying to figure out - - you know, in debt up to their eyeballs - - how to get through it all. What I'm saying to you today is that it does not have to be that way."); *id.* page 78, line 13–24 ("And I would suggest that whatever motivated you to come today - - for some of you in the room to live in a nicer home, a better neighborhood for the kids, for some of you to get them in private school or get them in college. For some of you to get out of a job you hate or just make more money, to be able to secure your retirement, to supplement your income, get out of debt, spend more time with the family, have residual income, whatever it is. Whatever that was that motivated you to come today, I think most of you in this room will see the solution to that."); *id.* page 115, line 9–12 ("How many of you like the idea of starting your Internet marketing today

but taking the gambling out of that decision?"); *id.* page 132, line 16–18 (“You are starting your internet career with the very best research tools out there in the industry today.”); *id.* page 146, Line 10–13 (“You’re going to work with Storesonline, you’re going to start marketing, you’re going to start to make some money. That’s all you care about anyway. Right?”); *id.* page 159–163 (With StoresOnline’s program you own your own business, you have residual income, and you have multiple streams of income.); *id.* page 247, line 8–9 (“The best way to generate cash flow on the Internet is having your own web site.”); *id.* page 257, line 8–9, (“You can make a lot of money just with affiliate programs.”); *id.* page 259, line 3–17 (“For how many of you in this room - -honestly - - would an extra thousand bucks a month cash, spendable income, make a pretty good difference in your finances? All right. Now that’s most of you. I got a few high rollers going, Nah. I’ll tell you what, I’ll take another grand a month. So let’s set that as our initial financial goal. From our site to generate an extra thousand bucks a month. Now I’m not saying our ultimate goal. Ultimately you can shoot for the moon, but let’s have some incremental goals along the way. And our initial goal: a thousand bucks a month. Cash spendable money. Cause anybody in this room ought to be able to do that from one site let alone six.”); *id.* page 383, line 7–9 (“But what I’m going to teach you is how to make money every time somebody clicks on your web site.”); *id.* page 416, line 23–page 417, line 2 (“See, I don’t know what your motivation was for coming here today, but whatever it was, I think many of you in this room have seen the solution. And many of you . . . have taken action”); *id.* page 419, line 15–18 (“Because this thing we’re talking about today, the Internet, it’s the real deal, And this company we’re talking about today, StoresOnline, they are the real deal.”).

14. Additionally, during the seminar, the presenters continually speak of being successful on the Internet and how StoresOnline’s program will help those attending the seminar be successful. *See id.* page 7, line 15–18; *id.* page 10, line 6–8; *id.* page 15, line 19–21; *id.* page 28, line 5; *id.* page 47, line 9–11; *id.* page 47, line 19–21; *id.* page 53, line 13–15; *id.* page 67, line 17–19; *id.* page 109, line 23–page 110, line 2; *id.* page 132, line 10–18; *id.* page 139, line 1; *id.* page, 212, 15–20; and *id.* page 451, line 5–8.

15. During the workshop, individuals are presented with a “90-day offer” and a “workshop offer.” Under the 90-day offer, an individual pays \$2,600 per website per year. *Id.* page 27, line 16–18. Under the workshop offer, those at the workshop can purchase three websites for \$2,700. *Id.* page 207, line 9–11. For \$2,200 more, three additional websites can be purchased. *Id.* page 210, line 1–2. An additional hosting fee of \$24.95 per month is also required. *Id.* page 208, line 8–10. Other products and services are also offered at the seminar for an additional sum. Some of these products and services are provided by other companies. *See id.* page 210, line 18–25.

16. Some individuals attending the full day workshop are seeking to use the StoresOnline program to start a home-based business. StoresOnline recognizes that their program is a way to start a business. *See* ¶ 13; *see also id.* page 14–15; *id.* page 78–79; *id.* page 412–419. As discussed below, Dale Snipes, Kenneth Taylor, Kim Gaddis, Jann McCullough, Denise Steidinger, and Deborah Allen each sought to start a business, although Dale Snipes already had an online business selling her books. From the statements made at the seminars,

individuals are led to believe that StoresOnline’s program will enable them to start a business.

17. StoresOnline’s program is sold to enable the purchaser to start a home-based business marketing and selling products on the Internet. *See* ¶ 13; *see also id.* page 74, line 3–8 (“The thrust of their company [StoresOnline] is to provide not just the sites but the tools, the technology, the resources, the marketing strategies, and the support. Really the whole package so that [the purchaser] can go out and be successful on the Internet.”); *id.* page 91, line 25–page 92, line 6 (“You’re going to need an e-commerce-enabled web site, an e-commerce-enabled merchant account, the proper gateway, the interface, the software, and the SSL security, and don’t even try to write that down because Storesonline will make sure you have all of that properly functioning on your site.”); *id.* page 99, line 1–3 (The “customers of Storesonline are people who are out there selling their wares on the Internet.”); *id.* page 132, line 16–18 (“You are starting your internet career with the very best research tools out there in the industry today.”); *id.* page 155, line 19–25 (“When I came to this workshop, I came to build a business. And I wanted a business I could pass on to those kids and grandkids. How many of you - - and I mean this seriously, would like to build a business that you could pass on to future generations? Okay. Good.”); *id.* page 156, line 14 (“So we have a great opportunity.”); *id.* page 159–163 (With StoresOnline’s program you own your own business, you have residual income, and you have multiple streams of income.); *id.* page 163, line 6–10 (“You see, this is your business, you own it, number one. It’s residual, orders come in while you sleep. And multiple streams. We can have different sites with diverse products to protect our income.”); *id.* page 451, line 5–8 (“Everything you need to be successful is available in your packet, at merchant services, at Storesonline, that

password-protected area, and of course, customer support.”).

18. Additionally, the presenter discusses how he and others have started a business using StoresOnline’s program and how others have been able to quit their jobs as result of their success. *See e.g. id.* page 155, line 19–25 (“When I came to this workshop, I came to build a business. And I wanted a business I could pass on to those kids and grandkids. How many of you - - and I mean this seriously, would like to build a business that you could pass on to future generations? Okay. Good.”); *id.* page 160, line 12–page 161, line 25 (“I don’t know how long it will take you to quit [your job]. But I do know how long it took this guy to quit. He’s name’s Dave Nicewanger (phonetic). His first site with Storesonline, leupoldscopes.com making about \$20,000 a month. Here’s the site. Now I think most of you in this room would say if you had a site making \$20,000 a month, most of you would probably quit right now. But an email that he sent to Storesonline this summer, he said, I didn’t quit yet. He said, I got my second site up and running. You look down here and you see the name of it, pfluegerreel.com. Again, that one’s right here. Pfluegerreel.com. . . . Anyway, he sent this email to Storesonline this summer, this past summer, ’04 - - ’05, excuse me. Just a few months ago here. And in the email - - and Storesonline share this with me, he said, Dear Storesonline, Whoo-hoo! I just quit my job. He said, Thanks for helping me get there. He said, now, between the two incomes - - he had Pflueger making about \$7000 a month and Leupold making about 20. He said between the two, I was now comfortable and I decided to quit my job. So for him I guess \$27,000 is what he needed every month to be able to feel comfortable. But the bottom line is this is what was significant to me in his letter. He said, I’ve been in the electronics business for 15 years. I never liked

electronics. Isn't it interesting how many of us will do something we don't even like to do just to keep the bills paid. You know, what he really likes? Hunting and fishing. Yeah, yeah. See, to me, what was more impressive than the money he makes is that he gets to pursue his passion. He gets to have financial freedom doing something he loves. Now, he quit his job this summer"); *id.* page 174, line 4–23 (“His name right here is Brian Castleman. As an 18-year-old college freshman he shows up to this workshop. He becomes a merchant, gets six web sites, and goes home and tells his dad who owns a shoe store, Hey, Dad, you sell shoes in the store. I’m selling shoes on the Internet. Now let me show you what he did with those initial six sites. The first site he put together, theshoeshack.com. Then he mirrored it, c&hbootcompnay.com. Then he mirrored it again, bootsandshoesforless.com. Then he found another specific market. Cycleboots.com. Then he found another mirrored market, Servicefootwear.com. And his final mirror, discountedboots.com. All six of those initial sites selling the same boots and shoes that dad sells in the stores to specific target audiences on the Internet. Let me show you his results. Between August and December, Brian Castleman’s sites sold \$120,000 in shoes.”)

19. Some individuals come to the seminar with an idea of a product they wish to sell, while others do not.¹ During the workshop, it is stated that it is not necessary to have a product to sell at the time of purchase of the program and that StoresOnline will teach them how to find products to sell. *See id.* page 18, line 21–page 19, line 2; *id.* page 354–362.

20. If an individual is prepared to purchase during the full day workshop, they are

1. For instance, Dale Snipes, Jann McCullough, and Deborah Allen had a product they intended to sell, while Kenneth Taylor, Kim Gaddis, and Denise Steidinger did not.

given a Business to Business Order Form. Respondents' Exhibit 3, 6, 9, 12, 15, and 18.

21. The Business to Business Order Form contains the following language:

This receipt is my proof of purchase. I understand and affirm that the above products/services are being purchased for business use only. I affirm StoresOnline, Inc. does not recommend I sell my sites and offers no marketing plan, joint venture, or reseller program. I agree that any and all controversy or claims arising out of or relating to this contract, or breach thereof, shall be settled exclusively by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. I accept binding arbitration, the warranty, guarantee and conditions, and the returned check policy as printed on the reverse of this form. I further understand and acknowledge that any and all testimonials shared in StoresOnline, Inc. events are not typical and my results may vary depending on my product, price, and marketing efforts. I understand that paying with cash or check is the least expensive form of payment. Purchase by credit card can be, and financing options are, more expensive based upon interest rates and timely payment. You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached Notice of Cancellation form for an explanation of this right.

Respondents' Exhibit 3, 6, 9, 12, 15, and 18.

22. When the individual receives the program, they are given a Stores Online Active Merchant Receipt. Respondents' Exhibit 4, 7, 10, 13, 16, and 19. The Active Merchant Receipt states, among other things:

I affirm that I am of legal age, and I understand, agree, and acknowledge that this purchase is made for business purposes only. . . . I acknowledge that Stores Online does not recommend I sell my storefront certificates, and offers no re-seller program. I again affirm my understanding that not all websites shown in Stores Online events are Stores Online sites, and all testimonials shared in all Stores Online events are not typical and my results may vary depending on my product, price, and marketing efforts. The only representations from Stores Online for which I have based my purchase decision on, are in writing and have been provided to me. Further, I understand and agree that given the specific nature of the Internet and business for which my products/services are used, and the fact that my success depends on my idea(s), products/services, prices, and how

effectively I promote them, Stores Online, Inc. does not offer a joint venture or marketing program and offers no guarantees other than those provided on the back of the order form that I have signed. . . .

Respondents' Exhibit 4, 7, 10, 13, 16, and 19. A sentence below the signature line of the Active Merchant Receipt states: "I have read, understand and agree with the above text, and acknowledge receipt of above software, license, certificates, materials, etc., listed above."

Respondents' Exhibit 4, 7, 10, 13, 16, and 19.

23. During the workshop, individuals are encouraged to contact StoresOnline. *See* Division's Exhibit A, page 337, line 1–7; *id.* page 451–53. Individuals are given contact information for StoresOnline, which includes the address for their Utah office and a Utah phone number. *See* Respondents' Exhibit 3, 6, 9, 12, 15, and 18. Individuals are encouraged to contact StoresOnline's customer support, some of which is provided in Utah. Division's Exhibit A, page 451–52.

24. Dale Snipes, Kenneth Taylor, Kim Gaddis, Jann McCullough, Denise Steidinger, and Deborah Allen each attended a full day seminar offered by Respondents.

Dale Snipes

25. a. Dale Snipes, an Idaho resident, attended both the preview session and full day seminar offered by StoresOnline. These occurred in Idaho and Washington.

b. Snipes believed that StoresOnline would provide the products and services necessary to start a business. Snipes already had a business selling books on the Internet.

c. Based on the statements made at the full day workshop, Snipes believed

that she would make more money than she paid for the program. However, no specific representations were made to her.

d. Snipes paid \$4,098 for three websites. Respondents' Exhibit 3.

e. Snipes received and signed the Internet Marketing Workshop Registration, a Business to Business Order Form, and an Active Merchant Receipt. Respondents' Exhibit 2, 3, and 4.

f. Snipes contacted StoresOnline's customer support in Utah.

Kenneth Taylor

26. a. Kenneth Taylor, a Colorado resident, went to both the preview session and full day seminar offered by StoresOnline. Both of these occurred in Colorado.

b. Taylor wanted to set up a home-based Internet business. He purchased StoresOnline's program to receive the software and services necessary to establish an Internet business. Taylor did not have a specific product he intended to sell.

c. At the full day seminar there was a lot of discussion about how there was money to be made on the internet. Taylor believed that he would make more money than he invested, although Taylor did not know how much money he might be able to make.

d. Taylor purchased three websites for \$3,778. Respondents' Exhibit 6.

e. Taylor received and signed the Internet Marketing Workshop Registration, a Business to Business Order Form, and an Active Merchant Receipt. Respondents' Exhibit 5, 6, and 7.

f. Taylor called StoresOnline's customer support when he was unable to use

the software to create a site.

g. Taylor filed a complaint with the Colorado Attorney General, which was later sent to Utah. Respondents' Exhibit 23.

Kim Gaddis

27. a. Kim Gaddis, an Arkansas resident, attended both the preview session and full day seminar offered by StoresOnline. Both of these took place in Arkansas.

b. Gaddis wanted to set up a home-based business. Gaddis previously used a software program to develop websites. At the time of her purchase, she did not have a specific product she sought to sell.

c. Gaddis thought that with StoresOnline's help she would be more successful. Gaddis defined success as recovering her investment. At the seminar, the presenter spoke of making a good living using StoresOnline's program. There was no guarantee, however, that she would be successful.

d. Gaddis purchased six websites at a cost of \$6,448. Respondents' Exhibit 9.

e. Gaddis received and signed the Internet Marketing Workshop Registration, a Business to Business Order Form, and an Active Merchant Receipt. Respondents' Exhibit 8, 9, and 10.

f. Gaddis contacted StoresOnline's customer support. Respondents' Exhibit 27.

Jann McCullough

28. a. Jann McCullough, an Arizona resident, attended both the preview session and full day seminar offered by StoresOnline. Both of these occurred in Arizona.
- b. McCullough was interested in starting a business and believed StoresOnline's program would help her set up a home-based business. McCullough planned to sell jewelry on the Internet. McCullough's husband had a small online business.
- c. At the full day workshop, the speaker talked about being successful using Respondents' program and indicated that those who purchased the program would also be successful.
- d. McCullough purchased six websites for \$5,398. Respondents' Exhibit 12.
- e. McCullough received and signed a Business to Business Order Form and an Active Merchant Receipt. Respondents' Exhibit 12 and 13. McCullough's husband signed the Internet Marketing Workshop Registration. Respondents' Exhibit 11.
- f. McCullough contacted StoresOnline customer support in Utah.

Denise Steidinger

29. a. Denise Steidinger, an Arizona resident, attended the full day seminar offered by StoresOnline. This occurred in Illinois. Steidinger had not attended the preview session.
- b. Steidinger hoped to start a home-based business marketing something on

the Internet. She believed that with StoresOnline's program she would be able to start a business.

c. Based on the representation made at the seminar, Steidinger was led to believe that she would make more money than she paid for the program, but was not guaranteed that she would receive a return on her investment.

d. Steidinger believed that this would be a good investment and that she would make more money than she had paid.

e. The presenter talked about his success using StoresOnline's program and made it sound easy.

f. Steidinger paid \$6,398 for six websites. Respondents' Exhibit 15.

g. Steidinger received and signed the Internet Marketing Workshop Registration, a Business to Business Order Form, and an Active Merchant Receipt. Respondents' Exhibit 14, 15, and 16.

h. Steidinger called StoresOnline's customer support in Utah.

Deborah Allen

30. a. Deborah Allen, a Florida resident, attended both the preview session and full day seminar offered by Respondents. Both seminars took place in Florida.

b. Allen was trying to start her own business selling purses on the Internet. She was made to feel that with StoresOnline's program she could start her own business and that StoresOnline was there to help.

c. The statements made at the seminar led Allen to believe that she could

make money. Allen believed that she would be making more money than she invested.

No guarantee was given that she would be successful, however.

d. Allen purchased the program for \$5,600. Respondents' Exhibit 18.

e. Allen received and signed the Internet Marketing Workshop Registration, a Business to Business Order Form, and an Active Merchant Receipt. Respondents' Exhibit 17, 18, and 19.

f. Allen's complaint to the Florida Division of Consumer Services was sent to the Utah Division of Consumer Protection. Respondents' Exhibit 24. The Florida Division of Consumer Services stated that the complaint appeared to fall within the jurisdiction of the Utah Division of Consumer Protection. *Id.*

The Settlement Agreement and Mutual Release

31. In December 2003, Respondents entered into a Settlement Agreement and Mutual Release ("Settlement Agreement") with the Division. Respondents' Exhibit 20. That Settlement Agreement states that "[i]n exchange for the release set forth below, and contingent upon the Division's agreement that StoresOnline is not required to register as a Business Opportunity in Utah under the Business Opportunity Disclosure Act, StoresOnline" would agree to do certain things. *Id.* at 2. Those include providing "light" disclosures, modifying its Business to Business Order Form to provide for arbitration, addressing customer complaints, reimbursing the Division for its administrative costs, informing consumers of a three-day right of rescission, disclosing to consumers a list of optional services, and disclosing to consumers that some knowledge of and access to a computer (or plans to purchase a computer) is required in order to purchase

StoresOnline's products and services. *Id.* at 2–5.

32. The Settlement Agreement also states that “StoresOnline acknowledges that if the Division determines after a reasonable period of time that StoresOnline is not participating in settlement discussions with customers in good faith, StoresOnline understands that the Division potentially might decide to file a subsequent Administrative Citation or other appropriate action in the future. StoresOnline, however, does not in anyway waive any of its rights to contest any such future action by the Division.” *Id.* at 4.

Citation

33. After receiving numerous complaints from purchasers of Respondents' program, on June 2, 2006, the Division's Chief Investigator Kent Nelson sent a letter to Respondents' President Brandon Lewis. *Division's Request for Pre-Trial Rulings and Opposition to Various Motions, Exhibit C*. In that letter, Mr. Nelson stated that “[a]fter considerable review of the Storesonline program, seminar presentation, and numerous contacts with consumers purchasing the website package program, this Division has determined that the company is a seller of assisted marketing plans as described under the Business Opportunity Disclosure Act, Utah Code Annotated § 13-15-2(1)(a)(iv).” *Id.* This letter served “as a demand under Utah Code Annotated § 13-15-6 for Storesonline Inc to file the required disclosures within 15 days of the date of [the] letter.” *Id.* The letter went on to state that if those disclosures were not timely filed, the Division would take “such further action as it deems necessary pursuant to the statute.” *Id.*

34. On August 3, 2006, the Division sent Respondents' attorney a letter detailing actions Respondents could take “which would take the program out of the purview of the

Business Opportunity Disclosure Act, regulated by the Division of Consumer Protection.”

Division’s Request for Pre-Trial Rulings and Opposition to Various Motions, Exhibit D.

35. On August 28, 2006, the Division issued an Administrative Citation to Respondents alleging a violation of the *Business Opportunity Disclosure Act*.

The Business Opportunity Disclosure Act

36. The Respondents have not filed the information with the Division as a seller of an assisted marketing plan pursuant to UTAH CODE ANN. § 13-15-4.

CONCLUSIONS OF LAW

Subject Matter Jurisdiction

37. For the reasons stated above, the Division has jurisdiction over the subject matter of this proceeding. There is nothing in the Division’s Findings of Fact that require it to change its ruling on Respondents’ Motion to Dismiss Administrative Citation for Lack of Subject Matter Jurisdiction.

Personal Jurisdiction

38. The Division has personal jurisdiction over the Respondents because both of their principal places of business are located in Utah. Both Respondents are engaged in doing business in Utah. StoresOnline provides their customers with contact information that lists a Utah address and phone number. StoresOnline provides customer service from Utah and directs consumers to contact their customer service in Utah.

The Parol Evidence Rule

39. Respondents argue, based on the parol evidence rule, that the Division is

precluded from considering the testimony and evidence presented concerning the representations made at the seminars because of the documents signed by the purchasers of the program.

40. The parol evidence rule is a principle of contract interpretation and has a very narrow application. *Hall v. Process Instruments and Control, Inc.*, 890 P.2d 1024, 1026 (Utah 1995). “Simply stated, the rule operates, in the absence of fraud or other invalidating causes, to exclude evidence of contemporaneous conversations, representations, or statements offered for the purpose of varying or adding to the terms of an *integrated* contract.” *Id.* Here, the statements made at the seminars are not offered for the purpose of varying or adding to the terms of an integrated contract. Rather, they are offered to determine whether Respondents are selling an assisted marketing plan under the *Business Opportunity Disclosure Act*. Therefore, the parol evidence rule does not apply.

41. In *Martin v. Pilot Industries*, the Fourth Circuit Court of Appeals addressed a similar contention under North Carolina’s Business Opportunity Sales Act. 632 F.2d 271 (4th Cir. 1980). In that case, Pilot sold a business opportunity to Martin and represented that Martin would generate income from the business opportunity. The contract stated that “no representations, inducements promises, or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.” *Id.* at 273. Additionally, Pilot provided Martin with a disclosure document in which Pilot expressly disavowed any guarantee of profit. *Id.* at 273. Pilot argued that the exclusionary clause and the disclosure document removed the sale from the Act’s purview. *Id.* at 275–76. The court found this argument unconvincing. *Id.* at 276. The court held that “[t]he profit disclaimer in the statement attached to the contract and the

exclusionary clause in the contract did not relieve Pilot from compliance with the statute.” *Id.* The court went on to note that “[t]he purpose of the statute would be thwarted if a seller could avoid its application by making an eleventh hour disclaimer.” *Id.*

42. For these reasons, the parol evidence rule does not apply and the Division may consider the testimony and evidence presented concerning the representations made by Respondents at the seminars and may take those representations into consideration in determining whether Respondents have sold an assisted marketing plan under the *Business Opportunity Disclosure Act*.

The Settlement Agreement and Mutual Release

43. Respondents argue that the Settlement Agreement prevents the Division from bringing the current action against StoresOnline. In the Settlement Agreement, the Division agreed to not require the Respondents to file the disclosures required by the *Business Opportunity Disclosure Act* provided the Respondents settled complaints in good faith. It was understood and agreed by the parties that the Division may enforce the statute if it determined, after a reasonable time, that the Respondents were not participating in settlement discussions with their customers in good faith. It was also understood and agreed that the Respondents reserved any of their defenses should the Division take steps to enforce the statute. The parties worked with each other under the agreement for some two and one-half years, when on June 2, 2006, the Division notified the Respondents that after numerous contacts with purchasers it had determined that the Respondents were selling assisted marketing plans and that, therefore, the Respondents must comply with the statute. This notice resulted in further discussion between the

parties. When further agreement could not be reached, the Division issued its citation on August 28, 2006. This was a reasonable time for the Division to determine that the Respondents were not participating in settlement discussions in good faith. Therefore, the Division's enforcement of the statute is in accordance with the terms of the Settlement Agreement.

Equitable Estoppel

44. Although not clearly articulated, Respondents appear to argue that the Division is estopped from bringing this action based on the Settlement Agreement.

45. "As a general rule, estoppel may not be invoked against a governmental entity." *Anderson dba Image Limousine v. Public Service Commission of Utah*, 839 P.2d 822, 827 (Utah 1992).

46. "In Utah, there is a limited exception to this general principle for unusual circumstances where it is plain that the interests of justice so require." *Id.* (internal quotation marks and citations omitted). "In cases where such an issue arises, the critical inquiry is whether it appears that the facts may be found with such certainty, and the injustice to be suffered is one of sufficient gravity, to invoke the exception." *Utah State Univ. v. Sutro & Co.*, 646 P.2d 715, 720 (Utah 1982).

47. "Equitable estoppel may be applied against the State, even when it is acting in a governmental capacity, if necessary to prevent manifest injustice, and the exercise of governmental powers will not be impaired as a result" *Celebrity Club, Inc. v. Utah Liquor Control Commission*, 602 P.2d 689, 694 (Utah 1979).

48. "The elements essential to invoke equitable estoppel are: (1) a statement,

admission, act, or failure to act by one party inconsistent with a claim later asserted; (2) reasonable action or inaction taken by the other party taken on the basis of the first party's statement, admission, act, or failure to act; and (3) injury to the second party that would result from allowing the first party to contradict or repudiate such statement, admission, act, or failure to act." *Eldredge v. Utah State Retirement Board*, 795 P.2d 671, 675 (Utah Ct. App. 1990).

49. "The few cases in which Utah courts have permitted estoppel against the government have involved very specific written representations by authorized government entities." *Anderson*, 839 P.2d at 827. Those "cases involved very clear, well-substantiated representations, by government entities." *Id.*

50. Estoppel is an equitable remedy. *Celebrity Club*, 602 P.2d at 694–95. Administrative agencies have only the authority granted to them by statute and are not authorized to do equity. *Bevans v. Indus. Comm'n*, 790 P.2d 573, 576 (Utah Ct. App. 1990). Thus, the Division cannot determine Respondents' estoppel argument.

51. If the Division could determine this issue, it would find that equitable estoppel does not apply in this case. Respondents have failed to show any specific representation by the Division. While the Settlement Agreement does state that the Respondents were not required to register as a Business Opportunity in Utah under the *Business Opportunity Disclosure Act* at that time, the Settlement Agreement does not state that Respondents do not sell a business opportunity. Further, the Settlement Agreement gives the Division the power to issue a subsequent Administrative Citation or other appropriate action, which the Division has now chosen to do. Therefore, Respondents' equitable estoppel argument fails.

The Business Opportunity Disclosure Act

52. To qualify as a business opportunity subject to the *Business Opportunity Disclosure Act* the Respondents must: (a) sell or lease products, equipment, supplies, or services for an initial required consideration of \$300 or more to enable the purchaser to start a business; and (b) represent at least one of the four conditions listed in UTAH CODE ANN. § 13-15-2(1)(a)(i) through (iv).

53. Respondents' sale of their program is the sale of products, equipment, supplies, or services. The program is made up of software to build and maintain e-commerce websites, together with on-going services in the form of technical support, customer services, and marketing training.

54. The transactions discussed above involve the sale of products and services with a required initial consideration of more than \$300.² The 90-day offer is \$2,600 per website per year. The workshop offer presented at the full day seminar ranges from \$2700.00 to \$4900.00.

55. The purpose of Respondents' program is to enable purchasers to start a business. *See* ¶ 17. The program is designed to enable those who purchase it to start a home-based business marketing and selling products over the Internet. Respondents provide the products and ongoing services to enable the purchaser to start a business.

56. During the full day workshop, the Respondents represent that the business

2. Respondents' argument that "[n]o one is forced to purchase the software" is irrelevant. *Respondents' Opposition to State's Post Trial Brief (Corrected)*, at 2. The *Business Opportunity Disclosure Act* does not require that the purchaser be forced to make the purchase, only that the purchase be more than \$300. There is no dispute that the program offered by Respondents is well over the \$300 threshold.

opportunity “will enable the purchaser to derive income from the assisted marketing plan that exceeds the price paid for the marketing plan.” UTAH CODE ANN. § 13-15-2(1)(a)(iv).³ This condition is satisfied by the statements described in Paragraph 13 and the testimony of the witnesses. While Respondents do not make any income guarantees, UTAH CODE ANN. § 13-15-2(1)(a)(iv) does not require a guarantee that the purchaser will make more than they paid for the program, only a representation that the business opportunity will enable the purchaser to derive income from the assisted marketing plan that exceeds the price paid for the marketing plan.⁴

57. Therefore, Respondents are sellers of assisted marketing plans as defined by UTAH CODE ANN. § 13-15-2(1)(a)(iv).

Application of the Act to Respondents

58. As set out in their Motion to Dismiss for Lack of Subject Matter Jurisdiction, the Respondents argue that the Division lacks the ability to regulate their activities, which they argue occur wholly outside the state of Utah. Respondents frame their argument as one relating to

3. In Respondents’ *Opposition to State’s Post Trial Brief (Corrected)*, Respondents correctly point out that the Administrative Citation alleges a violation of UTAH CODE ANN. § 13-5-2(1)(a)(iv). Respondents fail, however, to address any of the statements in Division’s Exhibit A which the Division argues show a violation of that provision. Rather, Respondents argue that Respondents have not violated UTAH CODE ANN. § 13-5-2(1)(a)(i) or UTAH CODE ANN. § 13-5-2(1)(a)(iii), neither of which are at issue here. Respondents’ *Opposition to State’s Post Trial Brief (Corrected)* does not even address the Division’s contention that the statements contained in Division’s Exhibit A show that Respondents sell an assisted marketing plan that will enable the purchaser to derive income that exceeds the price paid.

4. Compare UTAH CODE ANN. § 13-15-2(1)(a)(iii) (“that the seller will provide the purchaser with a *guarantee* that the purchaser will receive income from the assisted marketing plan that exceeds the price paid for the assisted marketing plan, or repurchase any of the products, equipment, supplies, or chattels supplied by the seller if the purchaser is dissatisfied with the assisted marketing plan”) (emphasis added) with UTAH CODE ANN. § 13-15-2(1)(a)(iv) (“that upon payment by the purchaser of a fee or sum of money, which exceeds \$300 to the seller, the seller will provide a sales program or marketing plan that will enable the purchaser to derive income from the assisted marketing plan that exceeds the price paid for the marketing plan.”).

subject matter jurisdiction. However, as noted at the hearing and above, pursuant to the *Utah Administrative Procedures Act* and UTAH CODE ANN. § 13-2-6(1), the Division has jurisdiction over the subject matter of this proceeding. Also as discussed above, the Division has personal jurisdiction over the Respondents.

59. The question that remains to be decided is whether the Division has the authority to apply the *Business Opportunity Disclosure Act* to the Respondents when the sale of their assisted marketing plans occurred outside of the state of Utah.

60. To begin, the Division has only those powers expressly or impliedly granted by statute. *Bevans*, 790 P.2d at 576.

61. The Utah State Legislature has expressly directed the Division to enforce the *Business Opportunity Disclosure Act* against persons violating the Act if: “(i) the violation or attempted violation is committed either wholly or partly within the state; (ii) conduct committed outside of the state constitutes an attempt to commit a violation within the state; or (iii) transactional resources located within the state are used by the offender to directly or indirectly facilitate a violation or attempted violation.” UTAH CODE ANN. § 13-2-6(4)(a).

62. Transactional resources means “any mail drop or mail box,” “any telephone or facsimile transmission device,” “any internet connection,” “any business office,” “any account with or services of a financial institution,” “the services of a common or private carrier,” or “the use of any city, county, or state asset or facility, including any road or highway.” *Id.* § 13-2-6(4)(b).

63. The *Business Opportunity Disclosure Act* requires that the seller of an assisted marketing plan file the information required by UTAH CODE ANN. § 13-15-4(1) before commencing business in this state.⁵ UTAH CODE ANN. § 13-15-4(3). Having concluded that Respondents are sellers of assisted marketing plans, there is no dispute that Respondents are in violation of this requirement.

64. Contrary to the Respondents' arguments, the activities that resulted in the violation were not committed wholly outside of the state. The sales may have occurred outside of the state. However, the Respondents have commenced business in this state and continue to engage in business in this state without having first filed the disclosures that are required of sellers of assisted marketing plans. In short, the violation has less to do with the actual sale as it does with the seller engaging in business in this state. There is no dispute that Respondents are engaging in business in this state. Their headquarters are located here. Their customer service is provided here. Therefore, the violation occurred wholly or partly within this state. Further, it is reasonable to conclude that the Respondents use a mail drop, telephone, Internet connection, account with a financial institution, or other transactional resources located in the state of Utah to facilitate their violations. Consequently, the Respondents are subject to the Division's jurisdiction pursuant to UTAH CODE ANN. § 13-2-6(4).

65. Further, the state has a compelling interest in regulating Utah-based companies which commit alleged violations of the statutes the Division enforces. This interest was

5. It should be noted that the Act requires these disclosure before commencing business in the state, not before selling an assisted marketing plan in the state.

recognized by Judge Cassell, in the federal lawsuit filed by Respondents against the Division, when he stated that “[t]he regulation of corporations headquartered in Utah involves important state interests.” *Division’s Request for Pre-Trial Rulings and Opposition to Various Motions, Exhibit A*, at 11. Judge Cassell went on to state: “Certainly the State has an interest in protecting consumers against the harms of unchecked exploitative businesses that are centered in Utah. And the State has an interest in preventing Utah from obtaining a reputation as being a haven for such businesses.” *Id.* at 11–12.

66. By applying the Act to the Respondents, the Division is not imposing the state’s regulatory scheme on other states. On the contrary, it is requiring sellers of assisted marketing plans, like the Respondents, to file certain information with the Division before commencing business in this state.

67. There can be no question that the Legislature has given the Division the authority to require these disclosures of the Respondents even though they sell their plans in other states. In fact, it is obvious that the legislature anticipated that businesses like the Respondents would conduct sales outside of the state. The *Business Opportunity Disclosure Act* requires that before commencing business in the state, the business disclose, among other things, all states in which the seller’s assisted marketing plans have been sold. UTAH CODE ANN. § 13-15-4(1)(m).

68. For these reasons, the Division has the statutory authority to apply the *Business Opportunity Disclosure Act* to the Respondents.

Conclusion

69. In violation of UTAH CODE ANN. § 13-15-4, the Respondents, as sellers of assisted

marketing plans, commenced business in this state without having first filed the required information with the Division.

RECOMMENDED ORDER

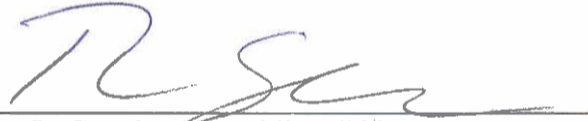
70. In accordance with UTAH CODE ANN. §§ 13-2-6 and 13-15-6, it is recommended that the Respondents, jointly and severally, be ordered to pay an administrative fine of \$2,500.00.

71. In accordance with UTAH CODE ANN. §§ 13-2-5, 13-2-6 and 13-15-6, it is recommended that the Respondents be ordered to cease and desist from doing business in this state until they have filed with the Division the disclosures required by UTAH CODE ANN. § 13-15-4 and have received proof of such filing from the Division.

72. In accordance with the parties' agreement previously entered into wherein the Division agreed to stay the enforcement of any administrative order that may be issued in this matter, it is recommended that the Division's Order of Adjudication be stayed pending the Respondents' exhaustion of administrative remedies and judicial review of the Division's Order.

Dated this 25th day of May, 2007.

UTAH DIVISION OF CONSUMER PROTECTION



Thomas L. Copeland, Presiding Officer
160 East 300 South
Salt Lake City, Utah 84114-6704
Telephone No. (801) 530-6601

CERTIFICATE OF SERVICE

I certify that I have this 25th day of May, 2007 served the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER on the parties in this proceeding by mailing a copy, properly addressed by first class mail with postage prepaid, to:

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And by hand-delivery to:

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Jeff Buckner, Assistant Attorney General
Utah Attorney General's Office





INFORMATION ABOUT AGENCY REVIEW

Department of Commerce
160 East 300 South, Box 146701
Salt Lake City, UT 84114-6701

If you have been denied a license, received disciplinary action on your license, lost a citation hearing, or have otherwise been adversely impacted by a decision from one of the Divisions at the Department of Commerce, please be aware that you may request agency review of that decision by the Department's Executive Director. Upon review, the Executive Director could uphold, reverse, or modify the Division's decision, or might return the case to the Division for further consideration.

If you choose to file a request for agency review, please keep in mind all of the following:

- ☐ **Written Request and Due date:** Your request for agency review ("Request") must be received **no later than 30 days** from the date of the Division order that you wish reviewed. The Request must be in writing and must be addressed to the **Executive Director, Utah Department of Commerce**, at the above address;
- ☐ **Copy of Order:** You must include with your Request a copy of the letter or order you wish reviewed.
- ☐ **Transcript of Hearing:** If a hearing was held in your case, and you are challenging the order on the grounds that the evidence presented at the hearing did not support the order, you must, at your expense, order a transcript of the hearing and file it with the Department. You must also file with the Department your certification verifying that you have ordered a transcript of the proceeding and stating the date by which you expect to file the transcript with this Department. (You may use the attached form titled "Certification Regarding Transcript.") For instructions on how to order a transcript, you may contact the hearing officer or administrative law judge who conducted the hearing. However if the hearing involved a DOPL Citation, contact Kim Lesh at 530-6628; if the hearing was before the Division of Real Estate, contact Renda Christensen at 530-6747;
- ☐ **Memorandum in Support of Your Request:** You may file a memorandum to support your Request. If you are required to file a transcript of the hearing with the Department, your memorandum must be filed no later than fifteen (15) days after the filing of the transcript. Otherwise, your memorandum must be filed at the time you file your Request;
- ☐ **Reply Memorandum:** If the Division files a response, you may file a final reply memorandum no later than five (5) days after the filing date of the Division's response;
- ☐ **Basis for Request:** In order to succeed on agency review, you must be able to show that you were substantially prejudiced as a result of any of the grounds identified in Utah Code Ann. § 63-46b-16(4); and
- ☐ **Copies to Division:** Please provide the Division copies of all documents that you file with the Department.

Please note that you should not rely on this letter alone for instructions regarding agency review proceedings. The Utah Administrative Procedures Act (Utah Code Ann. sections 63-46b *et seq.*) and this Department's rules (Utah Admin. Code R151-46b *et seq.*) generally govern requests for agency review. You may access these laws and rules at your local library or on the Department of Commerce web site:

- <http://www.commerce.utah.gov/agencyrev.html>, click on "Agency Review - Administrative Procedures"

If you have any questions about how to proceed, you are encouraged to seek legal advice from an attorney. You may contact Masuda Medcalf, Administrative Law Judge, at (801) 530-7663, with any technical or procedural questions, but the merits of the case cannot be discussed.

Revision Date: September 20, 2005